

## 48A C.J.S. Judges § 151

Corpus Juris Secundum | August 2023 Update

### Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D.; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

### VI. Authority, Powers, and Duties

#### C. Judicial Powers and Duties

##### § 151. Generally

[Topic Summary](#) | [References](#) | [Correlation Table](#)

#### West's Key Number Digest

West's Key Number Digest, Judges  24, 35

**The functions, powers, and duties of a judge are ordinarily regarded as judicial, and judicial power consists of the examination of the truth of a fact, the determination of the law arising upon that fact, and the ascertainment and application of a remedy.**

The powers and duties of a judge are ordinarily regarded as judicial.<sup>1</sup> The basic function of a judge is to determine controversies between litigants.<sup>2</sup> Judicial power consists of three elements, namely, examination of the truth of a fact, determination of the law arising upon that fact, and ascertainment and application of the remedy.<sup>3</sup> As a general rule, a judge's authority to rule on a case ends when the judgment becomes final.<sup>4</sup>

The exercise of judicial power is subject only to the constitution and the law as the power of a court to decide a case as the judge sees it, unfettered by any influences alien to the case or to the

judicial process, is fundamental to the concept of the judicial function.<sup>5</sup> The exercise of judicial power is also generally binding until set aside or reversed on appeal.<sup>6</sup>

A judge's judicial power exists solely by virtue of the judge's function as adjudicator and does not extend beyond the performance of judicial duties; use of judicial power to resolve a purely personal matter constitutes an abuse of the judicial position and warrants public reprimand.<sup>7</sup>

The mere fact that an act which would otherwise be regarded as ministerial is performed by a judge or judicial officer does not make such act judicial in nature.<sup>8</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

A judge may compel payments of fees and awards, divest litigants of their property, declare a defendant's guilt or innocence, sentence offenders to prison, separate families, and otherwise strip people of the civil and political rights to which they are guaranteed, only so long as the judge is vested by law, as prescribed by the constitution, with judicial authority. *Brown v. Gianforte*, 2021 MT 149, 488 P.3d 548 (Mont. 2021).

Prohibition is available to restrain an inferior court or judge from exceeding its or his or her powers in a proceeding over which the court has jurisdiction. *Soares v. Carter*, 25 N.Y.3d 1011, 32 N.E.3d 390 (2015).

## [END OF SUPPLEMENT]

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### Footnotes

- 1 Conn.—*Connecticut Television, Inc. v. Public Utilities Commission*, 159 Conn. 317, 269 A.2d 276 (1970).  
N.Y.—*Brown v. Brown*, 71 Misc. 2d 818, 337 N.Y.S.2d 465 (Sup 1972), order aff'd, 39 A.D.2d 897, 334 N.Y.S.2d 1005 (1st Dep't 1972).
- 2 U.S.—*Coats v. U.S.*, 405 F. Supp. 1107 (W.D. Okla. 1975).  
La.—*State v. Cooper*, 50 So. 3d 115 (La. 2010).  
Tenn.—*Memphis Housing Authority v. Tri-State Broadcasting Service, Inc.*, 63 Tenn. App. 484, 474 S.W.2d 912 (1971).

- 3                   W. Va.—[State ex rel. Skinner v. Dostert](#), 166 W. Va. 743, 278 S.E.2d 624 (1981).
- 4                   Mo.—[Muhm v. Myers](#), 400 S.W.3d 846 (Mo. Ct. App. E.D. 2013).
- 5                   W. Va.—[State ex rel. Skinner v. Dostert](#), 166 W. Va. 743, 278 S.E.2d 624 (1981).
- 6                   N.D.—[State ex rel. Johnson v. Thomson](#), 76 N.D. 125, 34 N.W.2d 80 (1948).
- 7                   Fla.—[In re Eastmoore](#), 504 So. 2d 756 (Fla. 1987).
- 8                   § 144.

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